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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1966

No. 579

UNITED NUCLEAR CORPORATION,
a Delaware corporation,
Petitioner,

vs.

MOKI OIL & RARE METALS COMPANY,
a New Mexico corporation,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS TENTH CIRCUIT

BRIEF FOR PETITIONER IN REPLY TO BRIEF FOR RESPONDENT IN OPPOSITION

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SCHIFFER PRINTING COMPANY, INC., SANTA FE, N. M.

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REPLY TO ARGUMENT

Respondent, in its Answer Brief, recognizes there is "what appears to be a conflict between the Circuits" on the question presented. (Brief for Respondent in Opposition, p. 2) Respondent contends that the conflict is a result of a "mechanical review" of the cases rather than "proper analysis and placement." (Brief for Respondent in Opposition, p. 2) Respondent's analysis for resolving the conflict between the Circuits is that in case of a "multi-activity, multi-purpose, multi-state entity" the principal place of business is the state "from which cen-

tralized general supervision of all of its business is exercised." (Brief for Respondent in Opposition, pp. 4-5) This rule is the one adopted by the Tenth Circuit below in its decision reported at 364 F. 2d 568.

Under this rule, if a corporation has activities in several states, has several purposes, and has several activities, the state where general supervision is exercised is automatically the principal place of business of the corporation, without consideration of whether the corporation "most impinges" on another state, has more than fifty percent of its assets, profits, and sales in another state, and has no economic activities in the state where general supervision is exercised.

Such a test completely ignores the fact that even where there are several purposes, activities and states involved, one state may so dominate the activities, purposes and economic life of the corporation that it must be said that the corporation is a citizen of that state. Where a corporation receives more than half its gross income from a single state, it is so closely tied to the local commercial fabric of that state as to be properly considered a citizen thereof.

No case other than the present has ever accepted the proposition that the principal place of business of a corporation is a state where there are no substantial economic activities at all, and the only activity is general supervision.

As a hypothetical example, if United States Steel had purchased a plantation in Hawaii, where it is assumed it had no substantial economic activities, and that the officers exercising general corporate supervision moved their offices to the plantation, it cannot be said that Pennsylvania would not be the principal place of business of United States Steel.

In the present cause, the board of directors, executive committee and stockholders have never met in Maryland. The chief executive officer is in Maryland less than half the time.

Respondent's test ignores the intent of the statute that a corporation should be deemed a citizen of a state from which it derives more than half its gross income. (2 U.S. Code Cong. & Admin. News (1958) 3126) The use of "principal place of business" in the statute enacted was not intended to reject as the principal place of business a state where a corporation derived more than half its gross income, but to provide dual citizenship for corporations whose operations were such that no single state accounted for more than half of gross income, such as United States Steel.

The test advocated by Respondent and adopted by the Tenth Circuit requires the Courts to ignore the economic activities, profits, sales, properties and purposes of the corporation, if it has more than one business activity and does business in more than one state. Respondent's test as to this type of corporation requires a Court to look only and solely at the place of general supervision even though such state has little or no business activity, to the exclusion, as in this case, of New Mexico, the location of substantially more than half of property, sales, profits and backlog. Such a rule is inconsistent with the very concept of "principal place of business," and completely ignores the relative magnitude of the activities and purposes of the corporation in the several states.

The opinion of the Tenth Circuit if not reviewed by this Court will greatly confuse a fundamental question of Federal jurisdiction, and can only lead to differing results among the Circuits. This Court should grant certiorari to establish rules and guidelines by which the Federal District Courts and Courts of Appeal can administer this fundamental question of Federal diversity jurisdiction. If the test stated by Respondent is the correct rule, this Court should so state, rather than leaving the Circuits in conflict.

CONCLUSION

It is respectfully submitted that this Court should grant its Writ of Certiorari to review the decision of the Tenth Cir-

cuit for the reasons that it involves an important question of Federal law which this Court has not previously had an opportunity to decide and there is a conflict between the Circuits.

Respectfully submitted,

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